

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

DOCKET NO. IR 22-076

Electric Distribution Utilities

Investigation of Whether Current Tariffs and Programs are Sufficient to Support Demand Response and Electric Vehicle Charging Programs

JOINT MOTION FOR CLARIFICATION AND SEPARATE PROCEEDINGS

NOW COMES Unital Energy Systems, Inc. (“Unital”), Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”), and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty”) (collectively, the “EDCs”) and, pursuant to N.H. Admin. Rule Puc 203.07, respectfully moves the New Hampshire Public Utilities Commission (the “Commission”) to (1) clarify the Order of Notice issued in the above-captioned matter on November 15, 2022 and (2) separate this investigation into demand response / flexibility practices, electric vehicle charging programs, and possible changes to the EDI structure into separate dockets.

In support of this Motion, the EDCs state as follows:

I. BACKGROUND

1. Pursuant to 16 U.S.C. § 2621 (“Consideration and determination respecting certain ratemaking standards”), “[e]ach State regulatory authority (with respect to each electric utility for which it has ratemaking authority) . . . shall consider each standard established by [16 U.S.C. § 2621(d)] and make a determination concerning whether or not it is appropriate to implement such standard” to carry out the purposes of Title 16 of the United States Code. 16 U.S.C. § 2621(a). Consideration of a standard under 16 U.S.C. § 2621(d) “shall be made after public notice and hearing,” and any subsequent determination must be in writing, “based upon

finding included in such determination and upon the evidence presented at the hearing,” and available to the public. 16 U.S.C. § 2621(b)(1). A State regulatory authority may, to the extent consistent with otherwise applicable state law, implement or decline to implement a standard determined to be appropriate to carry out the purposes of Title 16. 16 U.S.C. § 2621(c)(1).

2. On November 15, 2021, the Infrastructure Investment and Jobs Act of 2021 (“IIJA”) amended 16 U.S.C. § 2621(d) to establish two new standards, “Demand response practices” and “Electric vehicle charging programs.” 16 U.S.C. § 2621(d)(20), (21).

3. The “Demand response practices” standard, if implemented, would require the EDCs to “promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial customers to reduce electricity consumption during periods of unusually high demand.” 16 U.S.C. § 2621(d)(20)(A). Furthermore, if this standard is implemented the Commission must “consider establishing rate mechanisms allowing an electric utility . . . to timely recover the costs of promoting demand-response and demand flexibility practices.” 16 U.S.C. § 2621(d)(20)(B).

4. The “Electric vehicle charging programs” standard, if implemented, would compel a State to “consider measures to promote greater electrification of the transportation sector,” including the establishment of rates that

- (a) promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure;
- (b) improve the customer experience associated with electric vehicle charging, including by reducing charging times for light-, medium-, and heavy-duty vehicles
- (c) accelerate third-party investment in electric vehicle charging for light-, medium-, and heavy-duty vehicles; and
- (d) appropriately recover the marginal costs of delivering electricity to electric vehicles and electric vehicle charging infrastructure.

16 U.S.C. § 2621(d)(21).

5. Consideration of the standards established in 16 U.S.C. §§ 2621(d)(20) and

(d)(21) must commence within a year of the IIIJA’s enactment (November 15, 2021). 16 U.S.C. § 2622(b)(7)(A), (8)(A). A determination regarding each standard must be made within two years of the IIIJA’s enactment. 16 U.S.C. § 2622(b)(7)(B), (8)(B). The obligation to commence consideration of, and render a determination on, these standards in the above-described time frames does not apply when a State (or State legislature) has implemented the standard for an electric utility or the State regulatory authority has conducted a proceeding to consider implementation of the standard (or a comparable standard). 16 U.S.C. § 2622(g), (h).

6. On November 15, 2022, the Commission opened the above-captioned investigation, citing 16 U.S.C. § 2621.

II. REQUEST FOR CLARIFICATION

a. Demand Response and Demand Flexibility

7. The EDCs respectfully request that the Commission clarify its intent with respect to its investigation into demand response and demand flexibility practices. It is the EDCs’ understanding that the Commission opened this investigation, in part, to comply with consideration and determination requirements set forth in 16 U.S.C. § 2621(a), (b), (c) as they pertain to the “Demand-response practices” standard set forth in 16 USC § 2621(d)(20). This requires a threshold determination: whether the State has implemented the standard (or a comparable standard); whether the Commission has conducted a proceeding to consider implementation of the standard (or a comparable standard); or whether the State legislature has voted on the implementation of the standard (or a comparable standard). 16 U.S.C. § 2622(g). In its Order of Notice, the Commission explicitly made this determination in connection with the “Electric vehicle charging programs” standard, but it did not explicitly address whether, by statute, Commission Order, or otherwise, prior state actions obviate the need to consider the

federal “Demand response practices” standard. Though the Commission notes that “support[ing] cost effective demand response options for customers” is an existing policy in the State, Order of Notice at 2 (citing RSA 374-F:3, X and DR 96-150), it is not clear whether the Commission believes that this this constitute prior state action that satisfies the federal statutory requirement. The EDCs request that the Commission clarify whether it intends to make the threshold determination as part of its investigation or if it has already concluded that prior state action has not occurred, and that consideration of the federal standard is required.

8. The EDCs also request that the Commission clarify its intent as to the outcome of this investigation. Though presented within the framework of 16 U.S.C. § 2621, which requires only consideration and a determination as to whether to implement the federal standard as stated, the Commission also refers to “adopting standards for the promotion and enablement of demand response” and “adopting standards for demand response and demand flexibility practices.” Order of Notice at 3.¹ The Order of Notice also cites, as a factor driving this investigation, “the necessity to develop standards to meet the requirements to enable a competitive retail electricity market.” Order of Notice at 3. However, the Commission does not include a cite or a reference to a source or policy establishing such requirements, which appear to drive many of the questions and topics set forth on pages 3 and 4 of the Order of Notice. It is unclear whether the Commission intends to limit this investigation to consideration of the standard set forth in 16 USC § 2621(d)(20), or if it intends to define and implement additional State-specific standards or requirements related to “demand response and demand flexibility practices.”

¹ As a further example, the Commission lists, as topics for consideration in this investigation, whether a new data transfer “standard” should be adopted, and how Electronic Data Interchange standards can be “updated to enable a transactive retail electricity market.” Order of Notice at 3.

9. The EDCs also request clarification as to whether the Commission intends for this investigation to result in specific standards, obligations, or requirements to which the EDCs will be bound, or if the Commission intends it to be the precursor to an adjudication or rulemaking. As the Commission notes in its Order of Notice, 16 U.S.C. § 2621 requires that a determination be made after public notice and hearing, based upon findings and upon the evidence presented at the hearing. Order of Notice at 1; 16 U.S.C. § 2621(b). To the extent that such a determination would affect the legal rights, duties, or privileges of the EDCs or any other party, the Commission would likely need to commence an adjudicatory hearing. RSA 541-A:1, I, IV (defining “Adjudicative proceeding”² and “Contested case”³). This is similarly the case if the Commission intends to make any binding determinations relative to EV charging and access to charging infrastructure. Order of Notice at 4-5 (stating that the Commission “finds it appropriate to take this opportunity to consider whether any additional measures are needed in order to promote EV charging and access to charging infrastructure in New Hampshire.”).

10. if the Commission simply intends to issue a procedural order at the end of this proceeding announcing the commencement of an adjudication on one or more of these issues, then an investigation remains an appropriate venue for consideration of these topics.

11. The EDCs respectfully note that the scope of the investigation into demand response practices, as described in the Order of Notice, is very broad, extending well beyond whether EDCs should promote the use of demand response and demand flexibility practices by their customers and how they should recover the cost of doing so. The Commission indicates an intent to “review the effectiveness of communications between utilities, third parties, and

² “Adjudicative proceeding” means the procedure to be followed in contested cases, as set forth in *RSA 541-A:31* through *RSA 541-A:36*.” RSA 541-A:1, I.

³ “Contested case” means a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing.” RSA 541-A:1, IV.

ratepayers and the enabling technology” at the beginning of the investigation, suggesting the Commission intends to implement a potential phased approach. While some of the topics and questions identified for consideration in this docket are consistent with a consideration of the federal standard,⁴ others are highly complex in nature and appear oriented towards particular policy goals.⁵

12. In light of the timing requirements imposed by the federal statute, see 16 U.S.C. § 2622(b)(7)(B), it is likely more efficient for the Commission to first make certain threshold inquiries and determinations regarding the federal “Demand response practices” standard and then, to the extent deemed necessary by the Commission, conduct a focused and well-defined inquiry into technology and / or market-specific issues in a separate phase or standalone investigation.

III. REQUEST FOR SEPARATE INVESTIGATIONS

13. The Commission determined that it has already conducted the inquiry required by 16 U.S.C. § 2621(a)-(c) in connection with the federal “Electric vehicle charging programs” standard (16 U.S.C. § 2621(d)(21)) and thus is exempt from further considering the standard pursuant to 16 U.S.C. § 2622(h). Rather than end its inquiry there, however, the Commission “take[s] the opportunity to consider whether any additional measures are needed in order to promote EV charging and access to charging infrastructure in New Hampshire.” Order of Notice at 4-5

⁴ E.g., “What programs or services are currently offered by the utilities that support customer demand response activities to reduce peak demand, and what are the associated rate mechanisms?” and “What new programs or opportunities could be implemented to further promote demand response practices and reduce consumption during unusually high demand periods?”

⁵ E.g., “What standards and systems are needed to enable demand response and a transactive retail electricity market in New Hampshire that includes real time data transfer?”; “What structural reforms could enable a more competitive retail electricity market in New Hampshire and within ISO-NE?”; and “Should New Hampshire continue to leverage the current Electronic Data Interchange (EDI) paradigm, or should a new standard be used?”

14. The EDCs agree that the promotion of EV charging and access to charging infrastructure in New Hampshire is a timely and appropriate subject for Commission inquiry. However, with the elimination of the need to consider the federal “Electric vehicle charging programs” standard under 16 U.S.C. § 2621, there is no longer any direct nexus between the Commission’s investigations in this docket into demand response and electric vehicle charging. Additionally, the inclusion of a discussion of the overhaul of the Electronic Data Interchange (“EDI”) standard within the demand response discussion is actually a matter of substantial enough complexity to comprise a docket of its own. For the reasons discussed herein, the EDCs move the Commission to separate its investigation into demand response, electric vehicle charging programs, and changes to the EDI standard into separate dockets.

15. Demand response / demand flexibility, electric vehicle charging, and the EDI standard are complex and discrete subjects that will require significant input and information from a diverse group of stakeholders and participants. Comments, studies, presentations, and any other supporting material that the participants provide to the Commission or to fellow docket participants throughout the course of the investigation will vary widely for each subject and could be voluminous on any of the enumerated topics. To the extent that the Commission schedules or presides over technical sessions in this docket or even directs the participants to hold such technical sessions amongst themselves, many individuals, some of who may be paid counsel or consultants, as well as subject matter experts of the utilities will have to spend significant stretches of time sitting idle during discussion of a topic in which they are not experts or do not have an interest. This will result in considerable administrative inefficiency. Additionally, the complexity and scope of each subject and the requisite amount of information that the Commission will receive from participants to consider and analyze is likely to be

unwieldy. This could lead to diluting the focus and efficacy of the analysis and consideration of the issues in this docket and any resulting procedural orders if all issues are kept together for consideration.

16. Combining the Commission's investigations into demand response and EV charging, as well as potential changes to the existing EDI paradigm may be timely, but it will likely result in inefficiencies and a protracted, unnecessarily complicated investigation that could yield less effective results than if the issues are separated into distinct dockets as recommended in this motion. The EDCs believe that it is a more efficient use of the participants' time, and the Commission's time, to conduct three separate investigations. Ideally, the investigations would not occur on parallel tracks, but rather in subsequent or staggered proceedings, to avoid overburdening the Commission, the EDCs, the Department of Energy, the Office of the Consumer Advocate, and other interested participants.

17. Furthermore, to the extent the Commission intends to conduct a statutory consideration and determination of the federal "Demand response practices" standard, which will require an evidentiary hearing, the Commission's investigation into electric vehicle charging does not. In addition to being substantively distinct, the two investigations are also procedurally distinct.

18. It is in the best interest of the EDCs, the Commission, and all interested participants for the demand response and electric vehicle charging investigations, as well as the consideration of changes to the EDI standard, to be separated for the sake of efficiency and clarity. The EDCs therefore request that the Commission separate the investigations and establish individual procedural schedules that do not conflict with each other and result in unnecessary burden.

IV. CONCLUSION

18. The EDCs appreciate the Commission's interest in demand response practices and policies and electric vehicle charging programs, and intend to participate fully in the investigation of each. For the purposes of clarity and administrative efficiency, the EDCs request that the Commission clearly define the scope, intent, and procedure for each investigation and conduct the investigations in separate dockets. This will ensure that each investigation proceeds in a focused manner towards a well-understood objective, and that the resources of the participating parties and the Commission are used in a maximally efficient way.

WHEREFORE, the EDCs respectfully request that the Commission:

- A. Clarify the Order of Notice as requested above;
- B. Separate this investigation into distinct dockets; and
- C. Grant such additional relief as is just and appropriate.

[Signature Page to Follow]

Dated this 27th day of January, 2023.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I have caused copies of the above to be served on the service list in Docket No. IR 22-076.

Dated: January 23, 2023.



Patrick H. Taylor